**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.20070 OF 2006**

**DATED: 10th October, 2006.**

Between :

M/s. Apollo Hospitals, Jubilee Hills,
Hyderabad, rep. by its Chief Executive
Officer Dr. K.Hari Prasad. … Petitioner

And

Airports Authority of India, Hyderabad Airport,
Begumpet, Hyderabad, rep. by its Airport
Director & Another … Respondents

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**ORDER :**

The petitioner is a Super-speciality Hospital having branches at various places in Hyderabad. In the year 2002, the 1st respondent – Airports Authority of India had accepted the petitioner's offer to provide free first aid/emergency medical inspection facility in the premises of the Airport at Hyderabad. Accordingly, the petitioner was provided a room in the premises of the Airport, free of cost with free electricity and water. Pursuant thereto, the petitioner had established its equipment and provided a Doctor, Nurse and a Paramedical Man to provide immediate first aid in the Airport. By letter dated 26-11-2002, the 1st respondent informed the petitioner that the period of allotment of room was initially for a period of one year which may be extended at the sole discretion of the 1st respondent for further period. It is not in dispute that the allotment in favour of the petitioner was extended from time to time till the year 2006.

While so, the 1st respondent by letter dated 2-5-2006 informed the petitioner that it has been decided to provide medical centres for the passengers in both NTR Terminal Building and RGT Terminal Building subject to the conditions mentioned therein and called upon the petitioner to intimate its expression of interest. In the said letter, the petitioner was also asked to inform its offer towards licence fee. In response, the petitioner offered its bid on 7-9-2006 by indicating the licence fee and other charges as per the prevailing rates. It is pleaded that having received its bid, the 1st respondent informed the petitioner that the opening of financial bid would be intimated in due course. While the petitioner was awaiting the intimation, a letter dated 11-9-2006 was received by the petitioner on 16-9-2006 informing that the financial bids would be opened at 15.30 hours on 13-9-2006 in the office of the 2nd respondent. On enquiry, the petitioner came to know that the financial bid was already opened on 13-9-2006 in the absence of the petitioner. The petitioner addressed a letter dated 21-9-

2006 to the 2nd respondent informing that the intimation relating to opening of the financial bids was received by them through ordinary post belatedly on 16-9-2006. Since the financial bids were opened and finalized in its absence, the petitioner protested the same and requested the 2nd respondent to conduct the whole tender process afresh. A copy of the said letter was also marked to the Ministry for Civil Aviation. Despite receipt of the said letter, there was no response from the respondents 1 and 2 and the contract was awarded in favour of the 3rd respondent. Hence, this writ petition seeking a declaration that the action of the respondents 1 and 2 in opening the financial bids for provision of Emergency Medical Services at Airport in the absence of the petitioner as arbitrary and illegal.

On behalf of the respondents 1 and 2, the 2nd respondent filed a counter-affidavit stating that in response to the tenders invited for providing first aid emergency medical treatment to the passengers at the Airport, 3 hospitals in the city had participated including the petitioner and the 3rd respondent. The minimum quotation was fixed as Rs.25,000/- per month for location in each Terminal. The opening of the financial bids was intimated to all the three tenderers vide letters dated 11-9-2006 followed by telephonic communication. So far as the petitioner is concerned, it was informed to one Rasool, an employee of the petitioner hospital working in the Airport, who submitted the financial bid on behalf of the petitioner. The allegation that the 2nd respondent had discreetly opened the financial bid to eliminate the petitioner and in order to induct a person of the 2nd respondent's choice has been denied and it is stated that as per the financial bids the highest amount was quoted by the 3rd respondent for both the locations. Whereas the 3rd respondent quoted Rs.35,110/- for NTR Terminal and Rs.25,100/- for Rajiv Gandhi Terminal, the petitioner had quoted only Rs.25,000/- for each location. Hence, the 3rd respondent, who quoted highest officer, was awarded the contract by proceeding

dated 20-9-2004 which is valid till April, 2008. The entire process was conducted maintaining transparency and in accordance with law.

A separate counter-affidavit has been filed on behalf of the 3rd respondent stating that vide proceedings dated 20-9-2006 the contract was awarded in its favour and the same was accepted vide letter dated 21-9-2006 and the necessary security deposits and the other deposits have already been made. The 3rd respondent has also made the necessary arrangements for starting the Emergency Medical Services at the two locations of the Airport. All other allegations made by the petitioner were denied and it was pleaded that the interference by this Court is not warranted.

I have heard the learned Counsel for both the parties and perused the material on record.

Sri T.Bali Reddy, the learned Senior Counsel appearing for the petitioner, vehemently contended that the 1st respondent being an instrumentality of the State is bound to ensure transparency in award of contracts and cannot act arbitrarily to benefit a party of their interest. The learned Senior Counsel contended that the whole action of the respondents 1 and 2 is vitiated by mala fides and arbitrariness. In support of his submissions, the learned Senior Counsel has placed reliance upon the decisions in DUTTA ASSOCIATES (P) LTD. v. INDO MERCHANTILES (P) LTD.[1] and ABL INTERNATIONAL LTD. v. EXPORT CREDIT GUARANTEE CORPN. OF INDIA LTD.[2]

There can be no dispute about the ratio laid down in the above cases that the principle of judicial review under Article 226 would apply to the exercise of contractual powers by Government Bodies in order to prevent arbitrariness or favouritism. However, as held in TATA CELLULAR v. UNION OF INDIA[3] the duty of the Court is to confine itself to the question of legality of the decision making process with reference to the issues whether a decision making

authority exceeded its powers or whether an error of law has been committed or whether there is any breach of rules of natural justice or whether the decision was so unreasonable which no reasonable authority could have reached or whether the authority abused its powers.

In the case on hand, the material on record shows that the offer quoted by the 3rd respondent was the highest. Hence, the action of the respondents 1 and 2 in accepting the 3rd respondent's offer and awarding the contract in its favour cannot be said to be either arbitrary or illegal. However, the petitioner alleges that the 2nd respondent has stage-managed the entire process and manipulated the things so as to award the contract to the 3rd respondent. It is alleged that the belated intimation to the petitioner about the opening of the financial bids was deliberate so as to finalise the financial bids behind their back. It is also pleaded that the fact that the offer made by the 3rd respondent in respect of the Rajiv Gandhi Terminal was only Rs.100/- higher than the offer made by the petitioner itself establishes the collusion between the respondents 2 and 3.

The vague allegation of manipulation of quotation made by the 3rd respondent cannot be accepted in the absence of any other material to substantiate the same. At any rate, the same being a pure question of disputed question of fact cannot be taken as a ground for judicial review under Article 226 of the Constitution of India.

The other allegations of mala fides against the 2nd respondent are also extremely vague and do not have any factual support. Without making the concerned officer a party by name, such allegations cannot be accepted or appreciated to conclude that the decision making process is vitiated.

Admittedly, the contract in question is not governed by any Statute and it is not the case of the petitioner that the procedure adopted by the respondents 1 and 2 is in violation of any statutory

provisions.

In the facts and circumstances of the case and for the reasons stated above, I am unable to hold that the action of the respondents 1 and 2 in awarding the contract to the highest bidder is unreasonable, illegal or arbitrary warranting interference by this Court under Article 226 of the Constitution of India.

Accordingly, the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt. 10–10-2006

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[1] (1997) 1 SCC 53

[2] (2004) 3 SCC 553

[3] (1994) 6 SCC 651